

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 291 OF 2012

**SECURITIES AND EXCHANGE
BOARD OF INDIA
....APPELLANT**

VERSUS

**M/S. INFORMETICS VALUATION
AND RATING PVT. LTD.
RESPONDENT**

....

ORDER

SURINDER SINGH NIJJAR, J.

1. The present appeal under Section 15Z of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act") is directed against the impugned judgment and final order dated 9th November, 2011 passed by the Securities Appellate Tribunal, Mumbai ("the SAT"), in Appeal No. 155 of 2011, by which the appeal filed by M/s Informetics Valuation and Rating Pvt. Ltd., (the respondent herein) was allowed, and the order dated 24th June, 2011 passed by the Whole Time Member of SEBI and communication dated 21st July, 2011 of the Securities and Exchange Board of India ("the SEBI") was set aside. By the impugned order, the SAT has remanded the matter back to the appellant to consider the application of the respondent seeking registration

as a Credit Rating Agency (“CRA”) without requiring the respondent to produce Audited Annual Accounts of the respondent’s promoters for the two years ending December, 2010.

2. We may notice here the skeletal facts which are necessary for the determination of the limited legal issue involved in this appeal.

3. On 11th June, 2009, the respondent submitted an application to SEBI under Regulation 3 of the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 (“the CRA Regulations, 1999”) seeking registration as a CRA. The respondent company was incorporated on 23rd June, 1986. The promoters of the respondent are stated to be:

- (a) M/s. Coment (Mauritius) Limited through M/s. ACE Step Management Ltd.
- (b) M/s. V. Malik & Associates, Chartered Accountants – Consortium Member for all the Accounting and Management backup.
- (c) Infomerics India Foundation – Consortium Member as Policy Making Board.

4. The appellant (SEBI) is a Statutory Board established under the SEBI Act to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. Under Section 11 of the SEBI Act, the appellant is duty

bound to protect the interest of investors in securities and promote the development of, and to regulate, the securities market, by such measures as it thinks fit. Section 11(2) specifically enables SEBI to take the necessary measures to provide for inter alia registration and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification specify in this behalf.

5. Pursuant to the aforesaid power, in July, 1999, SEBI issued a notification to bring CRAs under its regulatory ambit, in exercise of powers conferred under Section 30 read with Section 11 of the SEBI Act.

6. The CRA Regulations, 1999 empowers the appellant to regulate CRAs operating in India. Under the CRA Regulations, 1999, a CRA had been defined as a body corporate, which is engaged or proposes to be engaged in the business of rating of securities offered by way of public or rights issue. SEBI has also prescribed a Code of Conduct to be followed by the CRAs in the aforesaid regulations. The CRA Regulations, 1999 inter alia, contain:

A. Regulations pertaining to the registration of credit rating agencies, application for grant of initial and permanent certificate, eligibility

criteria for promoter(s) of the credit rating agency, furnishing of information, clarification and personal representation by the promoter(s), grant of certificate by SEBI, its conditions, and procedure for refusal of certificate and its effect.

- B. General obligations of Credit Rating Agencies, Code of Conduct, Agreement with client(s), Monitoring and process of rating and the Procedure for review of rating, Appointment of Compliance Officer, maintenance of proper books of Accounts and records, etc.
- C. Restrictions on rating of securities issued by promoter(s) or by certain other person(s)
- D. Procedure for inspection and investigation
- E. Procedure for action in case of default

7. On 11th June, 2009, the respondent submitted an application to SEBI under Regulation 3 of the CRA Regulations, 1999. The office of the respondent was duly visited and inspected by the appellant. All information that was required by the appellant was supplied by the respondent. Further undertakings and confirmations as required by the appellant were also provided. By letter dated 20th August, 2009, the appellant required the respondent to furnish complete details of his promoters, confirm the status of their eligibility under Regulation 4(e) of the CRA Regulations, 1999, offer comments on a discrepancy noted in the

promoter's net worth certificate etc. In the aforesaid letter, it was pointed out that under Regulation 4(e) of the CRA Regulations, 1999, the applicant is required to show that its promoters have a continuous net worth of minimum Rs.100 crores as per its Audited Annual Accounts for the previous five years prior to filing of the application with the Board for grant of certificate under the CRA Regulations, 1999. It is pointed out that although M/s. ACE Step Management Ltd., as a promoter of the respondent, has the continuous net worth of minimum Rs.100 crores as per its Audited Annual Accounts for the previous five years prior to the filing of the application, yet the net worth certificate dated 29th May, 2009, certified by the accountants in this regard pertains to M/s. Coment (Mauritius) Limited. Therefore, the respondent was advised to offer comments on the aforesaid discrepancy and submit the requisite net worth certificate in compliance with the relevant provisions of the CRA Regulations, 1999.

8. The respondent through its letter dated 21st August, 2009 submitted the reply to the aforesaid discrepancy pointed out by the appellant. The respondent stated that M/s. Coment (Mauritius) Limited has invested in the appellant company through its associate company M/s. ACE Step Management Ltd., which was holding 3,65,000 (Three Lac Sixty Five Thousand) 10.84% equity shares in their company,

which is within the parameters of Regulation 4(e) of the CRA Regulations, 1999. The respondent also confirmed that M/s. Coment (Mauritius) Limited is a promoter of the respondent company having a continuing net worth of minimum Rs.100 crores as per its Audited Annual Accounts for the previous five years prior to the filing of the application with the Board. Therefore, it was stated that there is no discrepancy and the net worth certificate submitted by the respondent is in compliance with the provisions of the CRA Regulations, 1999. Still not satisfied, the appellant through an e-mail dated 1st September, 2009 (5.36 PM) directed the respondent to furnish the Audited Annual Accounts of the promoters of the appellant company for the previous five years prior to the filing of the application with SEBI. The respondent through a letter dated 1st September, 2009 again informed the appellant that their promoter M/s. Coment (Mauritius) Limited had the continuous net worth of Rs. 100 crores as per the Annual Accounts for the previous five years. Their accounts are audited and they have provided the appellant with a certificate of their bankers ING Asia Private Bank Ltd., Dubai, to that effect. The certificate was enclosed with the aforesaid letter. The certificate issued by the ING Bank was as under:-

“ING
PRIVATE BANKING
Date: 21 May 2009

TO WHOMSOEVER IT MAY CONCERN

This is to confirm that M/s. Coment (Mauritius) Limited, Les Cascade Building, Edith Cavell Street, Port Louis, Republic of Mauritius, part of the Kataria Group has had a continued net worth of over Rs.100 crores as per its accounts for the previous five years.

We further confirm that M/s. ACE Step Management Ltd. is promoted by M/s. Coment (Mauritius) Limited.

The above information is given in strictest confidence at the request of our client and is without responsibility or engagement on the part of the Bank and/or any of its officers or employees for its content or any reliance made upon it. The letter does not constitute any guidance on the part of the bank.

Yours faithfully,

Sd/-

Nitin Bhatnagar

Director & Head South Asia Team”

9. The letter further pointed out that “since the Coment (Mauritius) Ltd. Balance sheet is not a public document though in terms of holding in our company it is 10.84 % but in their terms it is a small investment made they may not like to share balance sheet with us. However, their bankers have confirmed that as per certificate it is within the compliance of SEBI regulation.” In view of the confirmation given by the bankers of M/s. Coment (Mauritius) Ltd. Promoter

Company, the respondent requested the appellant to rely on the bankers certificate.

10. It is further pointed out that in any event the respondent had submitted the annual accounts for the last 5 years. However, inspite of aforesaid, the appellant vide its letter dated 15th September, 2009 directed the respondent to furnish an undertaking as to whether the promoter of respondent or any associate of the respondent are registered with any regulatory agency abroad and also directed the respondent to have Audited Annual Accounts of the promoters for the 5 years prior to filing of the application.

11. The respondent by a letter dated 21st September, 2009 stated that it would furnish the Balance Sheet for five years period as soon as they were received by the respondent. The appellant by his letter dated 21st October, 2009 further directed the respondent to furnish the Audited Annual Accounts and detailed profile of the promoters of the respondent. On 26th November, 2009, respondent furnished the detailed profiles of its promoters and specific details about the promoters such as their activities in detail, the composition of the Board of Directors and the summary of their financial results for the last five years. However, the Balance Sheet for the five year's period was not furnished. Having furnished all the

information, the respondent by its letter dated 11th January, 2010 requested for approval of its pending application dated 11th June, 2009, for being registered as a CRA. However, in spite of repeated requests, the necessary registration was not granted. In fact, the appellant by letter dated 28th July, 2010 once again advised the respondent to furnish Audited Annual Accounts of its promoters - M/s. Coment (Mauritius) Limited for the period 2006 to 2009. It appears that till 1st March, 2011, the appellant was not satisfied with the efforts made by the respondent to supply the necessary Audited Accounts and issued Show Cause Notice as to why the application for registration should not be rejected in terms of Regulation 11(1) of the CRA Regulations, 1999.

12. We may notice here that in the Show Cause Notice, it is specifically mentioned that the respondent has failed to produce the Audited Annual Accounts of the promoter M/s. Coment (Mauritius) Limited for the previous five years prior to the filing of the application with the Board for registration as a CRA. It was pointed out that the respondent has not fulfilled the requirement under Regulation 4(e) read with Regulation 7(1) of the CRA Regulations, 1999. Therefore, SEBI was prima facie of the view that the appellant was unable to furnish the information sought by the Board during the course of processing of the application for registration

in accordance with the provisions of the CRA Regulations, 1999. The respondent pointed out in its reply to the Show Cause Notice dated 4th March, 2011 that the appellant had enquired about the status of M/s. Coment (Mauritius) Limited directly from the Mauritius Regulatory Authority and collected all the details to cross check their credentials. In spite of the aforesaid, the appellant was still insisting upon the same information which in fact is not a precondition for registration under the SEBI law or regulations. It is pointed out that even though the information was not required to be provided under the regulations, the investor company and the applicant still agree to furnish the Balance Sheet only to enhance their credibility and as a mark of their respect to SEBI. The respondent in fact protested that it was not being given equal treatment under law as others had been granted registrations without submission of any Annual Accounts of investor companies. Thereafter, the respondent by its letters dated 15th March, 2011 and 18th March, 2011 submitted the Audited Annual Accounts of M/s. Coment (Mauritius) Limited for the periods ending 31st December, 2003 to 31st December, 2007. On its request, the respondent was also granted a personal hearing by the Whole Time Member of SEBI on 10th June, 2011. However, even during the personal hearing, the respondent was advised to file the Audited Accounts of

M/s. Coment (Mauritius) Limited for the years 2009 and 2010. Again on 24th June, 2011, the Whole Time Member of the appellant directed the respondent to indicate as to which entity is its promoter(s) along with the basis of considering the entity as such and to submit Audited Annual Accounts of the promoter(s) for the last five years along with computation of net worth as per the SEBI prescribed formula latest by 15th July, 2011, failing which the application of the respondent would be deemed to be rejected. The Whole Time Member also directed the appellant to take a decision on the basis of the details provided by the respondent in pursuance of the order, latest by 15th August, 2011, in accordance with law. The respondent on 5th July, 2011 sought review/reconsideration of the aforesaid order. Ultimately, on 21st July, 2011, the appellant rejected the application of the respondent.

13. Aggrieved by the rejection, the respondent preferred an appeal being Appeal No. 155 of 2011 on 30th August, 2011 before the SAT. Against the communication dated 21st July, 2011 of the appellant and the order dated 24th June, 2011 passed by the Whole Time Member of the appellant. The SAT by its judgment and final order dated 9th November, 2011 allowed the appeal and set aside the impugned order dated 24th June, 2011 and 21st July, 2011 and remitted the matter to the appellant to consider the application

of the appellant without requiring it to produce the accounts for the two years ending December, 2010. Being aggrieved by the impugned order of SAT, SEBI is in appeal before this Court under Section 15Z of the SEBI Act.

14. We have heard the learned counsel for the parties at length.

15. Whilst allowing the appeal, the SAT interpreted Regulation 4(e), Regulation 7 and Form A contained in the First Schedule of the Regulations. It has been observed that :

“An application was filed on June 11, 2009 and it is the requirement of regulation 4(e) that the net worth of one of the promoters of the applicant should be rupees one hundred crores as per the audited annual accounts for the previous five years prior to the filing of the application. As already mentioned above, Form A prescribes that the applicant should produce a certificate from a Chartered Accountant to substantiate the fact regarding the net worth of its promoter which was done and the Board has at no stage questioned its veracity. Without doing so it (the Board) could not have asked for the annual accounts of the promoter.”

16. It is further observed that an application for the grant of a certificate is to be made in Form A as prescribed in the First Schedule to the Regulations. According to the eligibility criteria prescribed therein,

the applicant is required to enclose a Chartered Accountant's certificate, certifying the continues net worth to be of Rs. 100 crores for five years in the case of promoter referred to Regulation 4(e). With regard to the directions issued by the appellant to the respondent to produce the Annual Accounts of one of its promoters for the five years preceding the date of application, the SAT observed:-

"It is pertinent to mention here that neither the regulations nor the eligibility criteria in Form A requires the applicant to produce the annual accounts of the promoter"

Reiterating its earlier view, the SAT further observed:

"It is doubtful whether the Board could have asked for this information without doubting the veracity or correctness of the certificate of the Chartered Accountant that accompanied the application."

"As already mentioned above, Form A prescribes that the applicant should produce a certificate from a Chartered Accountant to substantiate the fact regarding the net worth of its promoter which was done and the Board has at no stage questioned its veracity, without doing so it (the Board) could not have asked for the annual accounts of the promoter."

Apart from the above, it is also noticed by the SAT that accounts for five years preceding the application were duly produced by the respondent. However, the Board then directed the respondent to produce accounts for another two years for the period ending

December, 2010. Since the respondent failed to produce the accounts for the two years, the application of the respondent for registration as a CRA has been rejected. It has been held that the direction for producing two year's accounts after the date of application could not be justified under Regulation 7. It has been held that such further information as referred to Regulation 7 would mean any information in addition to the information already furnished by the applicant alongwith the application. The relevant observations of SAT are :

“Surely the Board was not asking for any further information. It was only seeking the basic material on the basis of which the Chartered Accountant had furnished a certificate certifying that one of the promoters of the appellant had a net worth of rupees one hundred crores for the previous five years. This information could be asked for if the Board at any stage had doubted the correctness or veracity of the certificate of the Chartered Accountant.”

JUDGMENT

17. In coming to the aforesaid conclusion it is observed by the SAT that wherever the regulations wanted the applicant to produce the Annual Accounts, a specific provision in that regard had been made in the regulations. On the other hand, for the purpose of substantiating the fact that the promoter of the applicant had a net worth of Rs. 100 crores for the previous five years, regulations do not require the Annual Accounts of the promoter to be produced. The

regulations read with Form A prescribed that a certificate from the Chartered Accountant should be filed for this purpose. Therefore, it is held that the information sought by the appellant with regard to the additional two years was beyond the scope of the regulations and Form A, hence without jurisdiction.

18. Mr. C.U. Singh, learned senior counsel appearing for the appellant submitted that at this stage, it would not have been necessary to press the appeal on merits, but for the observations made by the SAT that without questioning the veracity of the certificate submitted by the Chartered Accountant, the Board could not have asked for the Annual Accounts of the promoter. He submitted that these observations would seriously curtail the powers of SEBI into requiring the applicant to furnish all relevant information while considering the application for registration as a CRA. For this limited purpose, learned senior counsel submitted that it is necessary for this Court to examine the correctness of the order passed by the SAT.

19. On the other hand, Mr. Suri, learned senior counsel appearing for the respondent submitted that necessary information having been furnished to the Board, the demand for an additional two years was beyond the scope of enquiry under Regulation 4(e) and various clauses of Form A. He emphasised that such an

information could not be called for under Regulation 7. According to the learned senior counsel that even for the five years preceding the date of application, the respondent is required only to look at the certificate of the Chartered Accountant which has been duly submitted by the respondent. However, in order to comply with the directions issued by the appellant, the respondent has already submitted the audited accounts for the five years preceding the date of application. Therefore, at this stage, there should be no hurdle to the registration of the respondent as CRA by the appellant.

20. We have considered the entire material and the submissions made by the learned senior counsel for the parties. The controversy raised herein revolves around the interpretation of the provisions contained in Regulation 4(e), Form A read with Regulation 7 of the CRA Regulations, 1999. In order to appreciate the true scope and ambit of the aforesaid provisions, it is necessary to take a bird's eye view of the SEBI Act and the CRA Regulations, 1999. As noticed earlier, the regulations have been made in exercise of the powers conferred on the Board by Section 30 read with Section 11 of the SEBI Act. Section 30 empowers the Board by notification to make regulations consistent with the Act and to carry out the purposes of SEBI Act. Section 30

(2)(d) empowers the Board to make regulations with regard to the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for the certificate of registration and the manner of suspension or cancellation of certificate of registration under Section 12. Section 11 empowers the SEBI to take measures to protect the interest of investors and to regulate the security market, inter alia by regulating and registering the working of stock progress and other intermediaries such as credit rating agencies, who may be associated with the securities market in any manner. Regulation 2(h) defines a CRA as a body corporate, which is engaged in or proposes to be engaged in the business of rating of securities offered by way of public or rights issue. Regulation 2(b) defines an associate in relation to a credit rating agency to include a person:

(i) who, directly or indirectly, by himself, or in combination with relatives, owns or controls shares carrying not less than ten percent of the voting rights of the credit rating agency, or

(ii) in respect of whom the credit rating agency, directly or indirectly, by itself, or in combination with other persons, owns or controls shares carrying not less than ten percent of the voting rights, or

(iii) majority of the directors of which, own or control shares carrying not less than ten percent of the voting rights of the credit rating agency, or

(iv) whose director, officer or employee is also a director, officer or employee of the credit rating agency;

Regulation 2(p) defines net worth as under:

"net-worth means the aggregate value of the paid up equity capital and free reserves (excluding reserves created out of revaluation), reduced by the aggregate value of accumulated losses and deferred expenditure not written off, including miscellaneous expenses not written off"

21. Regulation 3(1) provides that any person proposing to commence any activity as a credit rating agency shall make an application to the Board for the grant of a certificate of registration for the purpose. Regulation 3(3) provides that such application shall be made to the Board in Form A of the Schedule of the Regulations. Regulations 4, 5, 6 and 7 which are relevant for the decision of the legal issue involved in this case are as under:-

“Promoter of credit rating agency

4. The Board shall not consider an application under regulation (3) unless the applicant is promoted by a person belonging to any of the following categories, namely:

- (a) a public financial institution, as defined in section 4 A of the Companies Act, 1956 (1 of 1956);
- (b) a scheduled commercial bank included for the time being in the second schedule to the Reserve Bank of India Act, 1934 (2 of 1934);
- (c) a foreign bank operating in India with the approval of the Reserve Bank of India;

- (d) a foreign credit rating agency recognised by or under any law for the time being in force in the country of its incorporation, having at least five years experience in rating securities;
- (e) any company or a body corporate, having continuous net worth of minimum rupees one hundred crores as per its audited annual accounts for the previous five years prior to filing of the application with the Board for the grant of certificate under these regulations.

Eligibility criteria

5. The Board shall not consider an application for the grant of a certificate under regulation 3, unless the applicant satisfies the following conditions, namely:

- (a) the applicant is set up and registered as a company under the Companies Act, 1956;
- (b) the applicant has, in its Memorandum of Association, specified rating activity as one of its main objects;
- (c) the applicant has a minimum net worth of rupees five crores. Provided that a credit rating agency existing at the commencement of these regulations, with a net worth of less than rupees five crores, shall be deemed to have satisfied this condition, if it increases its net worth to the said minimum within a period of three years of such commencement.
- (d) the applicant has adequate infrastructure, to enable it to provide rating services in accordance with the provisions of the Act and these regulations;
- (e) the applicant and the promoters of the applicant, referred to in regulation 4 have professional competence, financial soundness and general reputation of fairness and integrity in business transactions, to the satisfaction of the Board;
- (f) neither the applicant, nor its promoter, nor any director of the applicant or its promoter, is

involved in any legal proceeding connected with the securities market, which may have an adverse impact on the interests of the investors;

- (g) neither the applicant, nor its promoters, nor any director, of its promoter has at any time in the past been convicted of any offence involving moral turpitude or any economic offence;
- (h) the applicant has, in its employment, persons having adequate professional and other relevant experience to the satisfaction of the Board;
- (i) neither the applicant, nor any person directly or indirectly connected with the applicant has in the past been -
 - (i) refused by the Board a certificate under these regulations or
 - (ii) subjected to any proceedings for a contravention of the Act or of any rules or regulations made under the Act.

Explanation: For the purpose of this clause, the expression "directly or indirectly connected person" means any person who is an associate, subsidiary, inter-connected or group company of the applicant or a company under the same management as the applicant.

- (j) the applicant, in all other respects, is a fit and proper person for the grant of a certificate;
- (k) grant of certificate to the applicant is in the interest of investors and the securities market.

Applicability of Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004.

5A. The provisions of the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004 shall, as far as

may be, apply to all applicants or the credit rating agencies under these regulations.

Application to conform to the requirements

6. Any application for a certificate, which is not complete in all respects or does not conform to the requirement of regulation 5 or instructions specified in Form A shall be rejected by the Board: Provided that, before rejecting any such application, the applicant shall be given an opportunity to remove, within thirty days of the date of receipt of relevant communication, from the Board such objections as may be indicated by the Board.

Provided further, that the Board may, on sufficient reason being shown, extend the time for removal of objections by such further time, not exceeding thirty days, as the Board may consider fit to enable the applicant to remove such objections.

Furnishing of information, clarification and personal representation

7. (1) The Board may require the applicant to furnish such further information or clarification as the Board may consider necessary, for the purpose of processing of the application.

(2) The Board, if it so desires, may ask the applicant or its authorised representative to appear before the Board, for personal representation in connection with the grant of a certificate.”

22. Form A of the First Schedule has to be submitted by the applicant together with the supporting documents along with the application. This was duly filled and furnished by the respondent.

23. A bare perusal of the regulations makes it clear that an applicant to be eligible to be registered as a credit rating agency has to be a person/entity promoted by a person belonging to any of the categories enumerated in Regulation 4. Categories 4(a), (b) and (c) are financial institutions as defined in Section 4(a) of the Companies Act; Schedule Commercial Banks included in the Second Schedule to the Reserve Bank of India Act, 1934 and foreign banks operating in India with the approval of the Reserve Bank of India. Foreign Credit Rating Agency recognized by or under any law for the time being in force in the country of incorporation having at least five years experience in rating securities fall within category 4(d). The respondent falls within category 4(e), which relates to any company or a body corporate having continuous net worth of minimum Rs.100 crores as per its Audited Annual Accounts *for the previous five years, prior to the filing of the application with the Board* for the grant of certificate under the Regulation. Regulation 5 provides for the eligibility criteria. It is provided that the Board *shall not consider* any application for the grant of a certificate under Regulation 3 unless the applicant satisfies the conditions set out therein. Regulation 6 provides that any application for a certificate which is not complete in all respects or does not conform to the requirements of Regulation 5 or instructions specified in Form A *shall be rejected by the Board*. It is, however,

necessary that before rejecting any such application, the applicant shall be given an opportunity to remove, the objections indicated by the Board within a period of 30 days of the receipt of communication of the objections by the Board to the applicant. This period can be further extended at the discretion of the Board on sufficient reason being shown by the applicant for a further period not exceeding 30 days.

24. A reading of Regulations 4, 5 and 6 together leaves no manner of doubt that the SEBI has no discretion not to reject the application if it does not satisfy the conditions laid down in Regulations 4 and 5. In fact, Regulation 4 mandates that the Board *shall not consider* an application for registration under Regulation 3 unless the applicant is promoted by a person belonging to any of the categories mentioned therein. Similarly, Regulation 5 categorically mandates that the Board *shall not consider* an application for the grant of a certificate under Regulation 3 unless the applicant satisfies all the conditions which are set out under Clause 5. Regulation 6 again is mandatory in nature, which provides that an application which is not complete in *all respects* or does not conform to the requirement of Regulation 5 or instructions specified in Form A *shall be rejected by the Board*. It appears, therefore, that the intention of the legislature, as expressed through the regulations, is to put a closure to

the consideration of the application on the basis of the information submitted on the date of application. The Board has the minimal discretion to extend the period for removal of objections upon hearing the applicant firstly for 30 days and thereafter for another 30 days. In other words, Regulation 7 enables the Board to ask for further information within the extended time stipulated in Regulation 6. For the purpose of processing of the application, the information/material for removal of objections has to be provided within the time stipulated by Board. But the maximum period provided is sixty days. There is no scope under the regulations for the time to be extended any further. The information sought must be in relation to the five years preceding the date of the application. In this view of the matter, we are of the opinion that the directions issued by the SAT that the Board could not have directed the respondent to produce the Audited Accounts for the two years beyond the date of the application, are in consonance with the provisions of the regulations. Under Regulation 7, the Board would have the power to seek further information or clarification for the purpose of processing of the application. This further information would relate only to the basic information with regard to the Audited Accounts for the five years preceding the date of the application. Therefore, the observations made by SAT as noticed above are perfectly justified.

25. This now brings us to the final submission made by Mr. C.U. Singh that the Board was within its power to ask for the Audited Accounts of the applicant for the 5 years preceding the date of the application. It is true that under Regulation 4(e), an applicant has to show that it has continuous net worth of minimum Rs.100 crores as per its Audited Annual Accounts for the previous five years prior to the filing of the application with the Board. Clause 2 of Form A provides the "Eligibility Criteria". Under Clause 2(1), the applicant has to indicate the category to which the promoters of the applicant company belong under Regulation 4, which in this case was 4(e). Clause 2(3) provides that the applicant shall "enclose a Chartered Accountant's certificate certifying the continuous net worth of Rs.100 crores for five years, in case the promoter referred to in Regulation 4(e)". As noticed above, Regulation 4(e) postulates that the proof of net worth on the basis of the *audited accounts* for five years prior to the filing of the application has to be given. It is not disputed before us that the applicant has submitted the Chartered Accountant's certificate certifying the continuous net worth of Rs.100 crores for five years on the basis of M/s. Coment (Mauritius) Limited bankers certificate. It is noticed by the SAT in the impugned order that the certificate was accepted by the Board and no clarification was sought from the

respondent in regard to the certificate furnished by the Chartered Accountant. Mr. C.U. Singh submitted that the certificate submitted by the Chartered Accountant was issued on the basis of the certificate of ING Private bank dated 29th May, 2009 confirming that M/s. Coment (Mauritius) Limited had a continued net worth of over Rs.100 crores as per its Annual Accounts for the previous five years. It is not certified on the basis of the Audited Accounts, therefore, the certificate did not satisfy the requirements under the regulations.

26. We are of the opinion that the submission made by Mr. C.U. Singh has substance and cannot be brushed aside. The certificate actually provided by the Chartered Accountants is as under:-

"NET WORTH CERTIFICATE"

We certify that for previous five years continuous Net worth of M/s. Coment (Mauritius) Limited, Les Cascade Building, Edith Cavell Street, Port Louis, Mauritius is over Rs.100 crores (Rupees One Hundred Crores).

The above information is given in strictest confidence at the request of our client for the purpose of filing application before Securities and Exchange Board of India.

FOR M/S RAJNISH & ASSOCIATES
CHARTERED ACCOUNTANTS
Certified True Copy
Sd/-

(PARTNER)
Membership

Place : New Delhi
No. 081180

Date: 29.05.2009”

27. We are satisfied that the aforesaid certificate did not conform to the provisions contained in the regulations which requires that the certificate of the Chartered Accountant should be in confirmation of the Audited Accounts of the promoters/applicant for the five years preceding the date of the application. We are unable to approve the observations made by SAT that “neither the regulations nor the eligibility criteria in Form A requires the applicant to produce the annual accounts of the promoter.” We are also unable to approve the observations of SAT that “it is doubtful whether the Board could have asked for this information without doubting the veracity or the correctness of the certificate of the Chartered Accountant that accompanied the application.” The certificate of the Chartered Accountant is evidence of the required net worth of the promoter. Therefore, it has to be in strict conformity with Regulation 4(e). Since the certificate issued by the Chartered Accountants did not categorically state that it is based on the audited accounts for the 5 years preceding the date of application, the Board certainly had the power to direct the respondent to produce the audited accounts. That being so, under Regulation 6, it was the duty of the Board to have rejected the application of the respondent.

28. Surprisingly, however, the Board continued to grant further time to the respondent to remove the objections even beyond the maximum sixty days permissible under the proviso to Regulation 6. It appears that the enquiries continued from 20th August, 2009 till March 1, 2011 when the show cause notice was issued to the respondent. The application of the respondent is not rejected till 21st July, 2011. The delay in the rejection of the application of the respondent was wholly unwarranted. It allowed the respondent a latitude not permissible under the regulations. Taking advantage of this latitude, the respondent has provided the Audited Accounts for the five years preceding the date of application. Not only this, we are informed that by now the respondent has even produced before this Court in a sealed cover the Audited Accounts of M/s. Coment (Mauritius) Limited for the subsequent two years upto 31st December, 2010 also.

29. Since the Board had extended the time to the respondent, even though not permissible in law, we are not inclined to modify the directions issued by the SAT. Especially in view of the submission of Mr. Suri that respondent is willing at this stage to produce the Audited Accounts of the promoter even for the subsequent two years.

30. In view of the above, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

.....J.
[Surinder Singh Nijjar]

.....J.
[M.Y.Eqbal]

**New Delhi;
February 19, 2013.**



JUDGMENT